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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.661 OF 2004

M/s.Integrated Container Feeder Service..Appellant

Vs.

The Director of Income-tax, Mumbai
& Anr. . ..Respondents

Mr. Sanjiv Shah with Mr. Rajesh Shah i/b. Rajesh Shah & Co., for the Appellant.
Mr. Parag Vyas for the Respondents.

CORAM: F.I. REBELLO &
J.P.DEVADHAR,JJ.
DATED: 29TH AUGUST, 2007

P.C.:

. The assessee by the present appeal has raised several questions. In so far as questions formulated at Question Nos.7,8 and 9, learned Counsel states that in view of the subsequent order of the Tribunal dated 17th June, 2005 they have become infructuous.

2. The issue, therefore, remains of the remaining question. The important question to be answered is "What is the place of management in accordance with Article 8 of the Indo Mauritius Treaty."?

3. According to the learned Counsel the learned Tribunal while recording a finding on this aspect, firstly whilst not taking on record the certificate dated 12th November, 2003 yet has commented on the same to reject the contention of the appellant that the place of management was at Mauritius. Secondly, it is contended that the learned Tribunal relied upon the evidence collected by the A.O. This material was not made available to the appellant herein and consequently the reliance of the said material would result in violation of the principles of natural justice and fair play in as much as the appellant had no opportunity of dealing with the said material.

4. Considering the controversy in our opinion it would be appropriate that the Tribunal rehear the entire appeal considering its order dated 17th June, 2005.

5. In the light of that the impugned order is set aside to the extent it was not recalled by the order dated 17th June, 2005 and the question of law as framed are also left open for consideration by the Tribunal while disposing of the Appeal in the light of its order dated 17th June, 2005. Appeal is accordingly allowed. No order as to costs.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**